

12

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

P J COTTER,

Plaintiff,

v.

U.S. BANK, N.A. AS TRUSTEE FOR
GREENPOINT MORTGAGE
FUNDING TRUST MORTGAGE
PASS-THROUGH CERTIFICATES,
SERIES 2006-AR4; OCWEN LOAN
SERVICING, LLC; and TROTT LAW,
P.C.,

Defendants.

Case No. 16-13080

Honorable Sean F. Cox

Magistrate Judge Anthony P. Patti

FILED

2017 MAY 18 P 12:29

U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PLAINTIFF'S MOTION TO CORRECT CLERICAL ERROR IN ORDER
(D.E. 29) UNDER FRCP 60(a)

Plaintiff, PJ Cotter, asks the Court to correct clerical errors within its *Order Adopting 4/4/17 and 4/5/17 Reports And Recommendations And Dismissing Plaintiff's Claims* (the "*Order*") (D.E. 29) under Fed. R. Civ. P. 60(a).

WHEREFORE, for these reasons found in the accompanying Memorandum, Plaintiff, PJ Cotter asks the Court:

1. To amend its **Order** to accommodate the timeliness of his Objections and subsequent Amended Objection, or,
2. In the alternative, vacate its **Order** (D.E. 29) and **Judgment** (D.E. 30) and grant Plaintiff 28 days to amend his Complaint.

Note: No Proposed Order is attached, since the Plaintiff is not certain how the Court can correct the clerical errors without reweighing the issues.

Respectfully submitted,

By: 
P J Cotter, Pro se
PO Box 131
Anchorville, MI 48004
810-459-6972
pocmich@yahoo.com

Date: May 18, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2017, I filed a hardcopy of the foregoing document with the Clerk of the Court, which will send notification of such filing to all registered recipients via the ECF, and upon the following by first-class United States mail, with postage prepaid:

Nasseem S. Ramin
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By: P J Cotter

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Anchorville, MI 48004

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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PJ Cotter,

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Case No. 16-13080

U.S. Bank, N.A., *et al.*,

Sean F. Cox
United States District Court Judge

Defendants.

ORDER
ADOPTING 4/4/17 AND 4/5/17 REPORTS AND RECOMMENDATIONS
AND DISMISSING PLAINTIFF'S CLAIMS

Acting *pro se*, Plaintiff PJ Cotter filed this action in state court, naming three Defendants (U.S. Bank, Ocwen Loan Servicing, LLC, and Trott Law, P.C.) and seeking to halt a pending foreclosure and sheriff's sale of his property in St. Clair County, Michigan.

Defendants removed the action to this Court on August 25, 2016. Thereafter, on September 1, 2016, a Motion to Dismiss was filed by Defendant Ocwen and U.S. Bank. (D.E. No. 5). On October 12, 2016, Defendant Trott filed its own dispositive motion. (D.E. No. 13). Both motions were referred to Magistrate Judge Anthony Patter for issuance of reports and recommendations.

In a twenty-one page Report and Recommendation ("R&R") issued on April 4, 2017 (D.E. No. 24), the magistrate judge carefully considered all of the claims asserted against U.S. Bank and Ocwen. He concluded that Plaintiff has failed to state a claim upon which relief can be granted against Defendants U.S. Bank and Ocwen" and recommended that the Court "grant Defendants' motion to dismiss the complaint in its entirety, on the merits." (*Id.* at Pg ID 894).

In an R&R issued on April 5, 2017 (D.E. No. 25), the magistrate judge addressed the sparse and conclusory allegations against Defendant Trott and recommended that the Court grant Defendant Trott's motion and dismiss Defendant Trott from this action.

Pursuant to Fed. R. Civ. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R.

The record reflects that Plaintiff has filed three different sets of objections to the two R&Rs (D.E. Nos. 26, 27, and 28), filed on April 21, 2017, and April 24, 2017.

None of the objections appear to have been timely filed. And more importantly, having reviewed the magistrate judge's two R&Rs and Plaintiff's stated objections to them, the Court concurs with the magistrate judge's careful analysis and finds Plaintiff's objections to be without merit.

Accordingly, the Court **ADOPTS** the magistrate judge's April 4, 2017 R&R and his April 5, 2017 R&R. **IT IS FURTHER ORDERED** that Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated: May 2, 2017

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on May 2, 2017, the foregoing document was served on counsel of record via electronic means and upon PJ Cotter via First Class mail at the address below:

PJ Cotter
PO Box 131
Anchorville, MI 48004

s/J. McCoy
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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U.S. Bank, N.A., *et al.*,

Sean F. Cox
United States District Court Judge

Defendants.
_____ /

JUDGMENT

For the reasons set forth in Reports and Recommendation issued on April 4, 2017, and April 5, 2017, and an Order issued this date, **IT IS ORDERED, ADJUDGED, AND DECREED** that this action is **DISMISSED WITH PREJUDICE**.

Dated: May 2, 2017

s/Sean F. Cox
Sean F. Cox
U. S. District Judge

I hereby certify that on May 2, 2017, the foregoing document was served on counsel of record via electronic means and upon PJ Cotter via First Class mail at the address below:

PJ Cotter
PO Box 131
Anchorville, MI 48004

s/J. McCoy
Case Manager

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Case No. 16-13080

Honorable Sean F. Cox

Magistrate Judge Anthony P. Patti

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF
MOTION TO CORRECT CLERICAL ERROR IN ORDER (D.E. 29)**

Plaintiff, PJ Cotter, asks the Court to correct its clerical error within its
*Order Adopting 4/4/17 and 4/5/17 Reports and Recommendations and
Dismissing Plaintiff's Claims* (the "*Order*") (D.E. 29) under Fed. R. Civ. P. 60(a).

A. INTRODUCTION

1. The Plaintiff filed this motion as soon as he realized that the judgment contained clerical errors.

2. There is no deadline to file this Motion.

3. The Order reads,

Pursuant to Fed. R. Civ. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. (D.E. 29, p. 2, ¶ 2.)

4. The first *Report and Recommendation to Grant U.S. Bank and Ocwen's Motion to Dismiss (DE 5)* ("R&R 1") was filed April 4, 2017. (D.E. 24.)

5. The second *Report and Recommendation to Grant Defendant's Motion for Judgment on the Pleadings* ("R&R 2") was filed April 5, 2017. (D.E. 13.)

6. Plaintiff filed his Objections to R&R 1 on April 21, 2017. (D.E. 26.)

7. Plaintiff filed his Objections to R&R 2 and his Amended Objection to R&R 1 on April 24, 2017. (D.E. 26 & 27.)

8. The R&Rs gave the Movants 14 days to respond to Plaintiff's objections.

9. Mr. Cotter amended his first set of objections to fully conform to the *Procedure on Objections* as laid out in R&R 1 before the Movant responded to the objections.

10. The Court adopted R&R 1 and 2 before the Movant's window to respond had expired.

11. The Plaintiff does not file electronically.

12. Plaintiff was served the R&Rs by mail.

B. ARGUMENT

A court can correct a clerical error in an order or judgment so that it reflects the actual intentions and necessary implications of the court's decision. The Order reads,

None of the objections appear to have been timely filed. And more importantly, having reviewed the magistrate judge's two R&Rs and Plaintiff's stated objections to them, the Court concurs with the magistrate judge's careful analysis and finds Plaintiff's objections to be without merit. (D.E. 29, p. 2, ¶ 4.)

Fed. R. Civ. P. 6(d) gives parties an additional three days to respond to a document served by any means other than personal delivery.

The Magistrate Judge's recommendation and proposed findings of fact were served by mail. Objections were to be filed within 14 days under FRCP 72. However, the objecting party has an additional three days to file and serve the objections, Three days are added for service.

The Court miscalculated the Plaintiff's time to respond.

Further, the Court deprived the Movants of their 14-day window to respond.

The correction of the clerical errors will not affect the substantive rights of the parties.

Plaintiff contends the **Order** (D.E. 29) and **Judgment** (D.E. 30) were premature given the Court's miscalculations.

Plaintiff fears the Court not only shortchanged the time period to object, but also failed to give full consideration to his objections given they were viewed as late.

A clerical error is a mistake, oversight, or omission in the recitation of the judgment that causes the judgment to inaccurately reflect what was intended by the court. Rivera v. PNS Stores, 647 F.3d 188, 193-94 (5th Cir.2011); Truskoski v. ESPN, Inc., 60 F.3d 74, 77 (2d Cir.1995); American Fed'n of Grain Millers v. Cargill Inc., 15 F.3d 726, 728 (7th Cir.1994); see also In re Walter, 282 F.3d 434, 440 (6th Cir.2002) (basic purpose of rule is to authorize court to correct mechanical errors that arise from oversight or omission). A clerical error correctable under FRCP 60(a) can be made by the clerk, the judge, or even the parties.

C. Conclusion

For these reasons Plaintiff, PJ Cotter asks the Court:

1. To amend its **Order** to accommodate the timeliness of his Objections and subsequent Amended Objection, or,

2. In the alternative, vacate its **Order** (D.E. 29) and **Judgment** (D.E. 30) and grant Plaintiff 28 days to amend his Complaint.

Note: No Proposed Order is attached, since the Plaintiff is not certain how the Court can correct the clerical errors without reweighing the issues.

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